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GENERAL ELECTRIC COMPANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 RUDOLPH HANNA.

12 Plaintiff,

13 |

14 GENERAL ELECTRIC COMPANY, et
al.

Defendants.

CASE NO. CV 08-0980 EDL

**GENERAL ELECTRIC COMPANY'S
ANSWER TO COMPLAINT FOR
ASBESTOS PERSONAL
INJURY/PRODUCTS LIABILITY;
DEMAND FOR JURY TRIAL;
CERTIFICATION OF INTERESTED
ENTITIES**

18 Defendant GENERAL ELECTRIC COMPANY (“GE”) hereby answers the Complaint
19 filed on February 15, 2008, by plaintiff Rudolph Hanna (“Plaintiff”) as follows:

20 1. To the extent that paragraph 1 of the complaint consists of allegations of fact as to
21 Plaintiff, GE lacks sufficient knowledge or information to form a belief as to the truth of the
22 allegations of paragraph 1, and on such basis the allegations are denied.

23 2. To the extent that paragraph 2 of the complaint consists of allegations of fact as to
24 Plaintiff, GE lacks sufficient knowledge or information to form a belief as to the truth of the
25 allegations of paragraph 2, and on such basis the allegations are denied. To the extent that
26 paragraph 2 of the complaint consists of allegations of fact as to other defendants, GE lacks
27 sufficient knowledge or information to form a belief as to the truth of the allegations of

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1 paragraph 2, and on such basis the allegations are denied. To the extent that paragraph 2 of the
 2 complaint consists of allegations of fact as to GE, GE denies such allegations.

3 3. To the extent that paragraph 3 of the complaint consists of allegations of fact as to
 4 Plaintiff, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 5 allegations of paragraph 3, and on such basis the allegations are denied. To the extent that
 6 paragraph 3 of the complaint consists of allegations of fact as to other defendants, GE lacks
 7 sufficient knowledge or information to form a belief as to the truth of the allegations of
 8 paragraph 3, and on such basis the allegations are denied. To the extent that paragraph 3 of the
 9 complaint consists of allegations of fact as to GE, GE denies such allegations.

10 4. To the extent that paragraph 4 of the complaint consists of allegations of fact as to
 11 Plaintiff, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 12 allegations of paragraph 4, and on such basis the allegations are denied. To the extent that
 13 paragraph 4 of the complaint consists of allegations of fact as to other defendants, GE lacks
 14 sufficient knowledge or information to form a belief as to the truth of the allegations of
 15 paragraph 4, and on such basis the allegations are denied. To the extent that paragraph 4 of the
 16 complaint consists of allegations of fact as to GE, GE denies such allegations.

17 5. To the extent that paragraph 5 of the complaint consists of allegations of fact as to
 18 Plaintiff, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 19 allegations of paragraph 5, and on such basis the allegations are denied. To the extent that
 20 paragraph 5 of the complaint consists of allegations of fact as to other defendants, GE lacks
 21 sufficient knowledge or information to form a belief as to the truth of the allegations of
 22 paragraph 5, and on such basis the allegations are denied.

23 6. Paragraph 5 of the complaint contains no allegations to which GE is required to
 24 respond.

25 7. To the extent that paragraph 7 of the complaint consists of conclusions of law, GE
 26 is not required to respond to it. To the extent that paragraph 7 of the complaint consists of
 27 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
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1 a belief as to the truth of the allegations of paragraph 7, and on such basis the allegations are
2 denied.

3 8. To the extent that paragraph 8 of the complaint consists of allegations of fact as to
4 Plaintiff, GE lacks sufficient knowledge or information to form a belief as to the truth of the
5 allegations of paragraph 8, and on such basis the allegations are denied. To the extent that
6 paragraph 8 of the complaint consists of allegations of fact as to other defendants, GE lacks
7 sufficient knowledge or information to form a belief as to the truth of the allegations of
8 paragraph 8, and on such basis the allegations are denied. GE lacks sufficient knowledge or
9 information to form a belief as to the truth of the allegation that this court has original
10 jurisdiction under 25 USC § 1332, and on such basis the allegation is denied.

11 9. To the extent that paragraph 9 of the complaint consists of conclusions of law, GE
12 is not required to respond to it. To the extent that paragraph 9 of the complaint consists of
13 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
14 a belief as to the truth of the allegations of paragraph 9, and on such basis the allegations are
15 denied. To the extent that paragraph 9 of the complaint consists of allegations of fact as to
16 Plaintiff, GE lacks sufficient knowledge or information to form a belief as to the truth of the
17 allegations of paragraph 9, and on such basis the allegations are denied. GE lacks sufficient
18 knowledge or information to form a belief as to the truth of Plaintiff's allegation that the
19 Northern District of California is the proper venue for this case, and on such basis the allegation
20 is denied.

21 10. To the extent that paragraph 10 of the complaint consists of conclusions of law,
22 GE is not required to respond to it. To the extent that paragraph 10 of the complaint consists of
23 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
24 a belief as to the truth of the allegations of paragraph 10, and on such basis the allegations are
25 denied. To the extent that paragraph 10 of the complaint consists of allegations of fact as to
26 Plaintiff, GE lacks sufficient knowledge or information to form a belief as to the truth of the
27 allegations of paragraph 10, and on such basis the allegations are denied. To the extent that
28 paragraph 10 of the complaint consists of allegations of fact as to GE, GE lacks sufficient

1 knowledge or information to form a belief as to the truth of the allegations of paragraph 10, and
 2 on such basis the allegations are denied.

3 11. To the extent that paragraph 11 of the complaint consists of allegations of fact as
 4 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 5 of the allegations of paragraph 11, and on such basis the allegations are denied. GE admits that,
 6 in the past, it manufactured, distributed, supplied and sold certain products which contained
 7 some quantity of asbestos and/or had component parts which may have contained some quantity
 8 of asbestos, during a time period which may or may not be relevant to this case. Except to the
 9 extent admitted, GE denies all other allegations of fact as to GE in paragraph 11 of the
 10 complaint.

11 12. To the extent that paragraph 12 of the complaint consists of conclusions of law,
 12 GE is not required to respond to it. To the extent that paragraph 12 of the complaint consists of
 13 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 14 a belief as to the truth of the allegations of paragraph 12, and on such basis the allegations are
 15 denied. To the extent that paragraph 12 of the complaint consists of allegations of fact as to
 16 Plaintiff, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 17 allegations of paragraph 12, and on such basis the allegations are denied. To the extent that
 18 paragraph 12 of the complaint consists of allegations of fact as to GE, GE denies such
 19 allegations.

20 13. To the extent that paragraph 13 of the complaint consists of conclusions of law,
 21 GE is not required to respond to it. To the extent that paragraph 13 of the complaint consists of
 22 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 23 a belief as to the truth of the allegations of paragraph 13, and on such basis the allegations are
 24 denied. To the extent that paragraph 13 of the complaint consists of allegations of fact as to GE,
 25 GE denies such allegations.

26 14. To the extent that paragraph 14 of the complaint consists of allegations of fact as
 27 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 28 of the allegations of paragraph 14, and on such basis the allegations are denied. To the extent

1 that paragraph 14 of the complaint consists of allegations of fact as to Plaintiff, GE lacks
 2 sufficient knowledge or information to form a belief as to the truth of the allegations of
 3 paragraph 14, and on such basis the allegations are denied. To the extent that paragraph 14 of the
 4 complaint consists of allegations of fact as to GE, GE denies such allegations.

5 15. To the extent that paragraph 15 of the complaint consists of conclusions of law,
 6 GE is not required to respond to it. To the extent that paragraph 15 of the complaint consists of
 7 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 8 a belief as to the truth of the allegations of paragraph 15, and on such basis the allegations are
 9 denied. To the extent that paragraph 15 of the complaint consists of allegations of fact as to
 10 Plaintiff, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 11 allegations of paragraph 15, and on such basis the allegations are denied. To the extent that
 12 paragraph 15 of the complaint consists of allegations of fact as to GE, GE denies such
 13 allegations.

14 16. To the extent that paragraph 16 of the complaint consists of allegations of fact as
 15 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 16 of the allegations of paragraph 16, and on such basis the allegations are denied. To the extent
 17 that paragraph 16 of the complaint consists of allegations of fact as to Plaintiff, GE lacks
 18 sufficient knowledge or information to form a belief as to the truth of the allegations of
 19 paragraph 16, and on such basis the allegations are denied. To the extent that paragraph 16 of the
 20 complaint consists of allegations of fact as to GE, GE denies such allegations.

21 17. GE admits that, over time, inhalation or ingestion of asbestos fibers can
 22 cause lung disease and cancer. Except to the extent admitted, GE denies all allegations of
 23 paragraph 17.

24 18. To the extent that paragraph 18 of the complaint consists of allegations of fact as
 25 to Plaintiff, GE lacks sufficient knowledge or information to form a belief as to the truth of the
 26 allegations of paragraph 18, and on such basis the allegations are denied.

27 19. To the extent that paragraph 19 of the complaint consists of conclusions of law,
 28 GE is not required to respond to it. To the extent that paragraph 19 of the complaint consists of

1 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
2 a belief as to the truth of the allegations of paragraph 19, and on such basis the allegations are
3 denied. To the extent that paragraph 19 of the complaint consists of allegations of fact as to
4 Plaintiff, GE lacks sufficient knowledge or information to form a belief as to the truth of the
5 allegations of paragraph 19, and on such basis the allegations are denied. To the extent that
6 paragraph 19 of the complaint consists of allegations of fact as to GE, GE denies such
7 allegations.

8 20. To the extent that paragraph 20 of the complaint consists of conclusions of law,
9 GE is not required to respond to it. To the extent that paragraph 20 of the complaint consists of
10 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
11 a belief as to the truth of the allegations of paragraph 20, and on such basis the allegations are
12 denied. To the extent that paragraph 20 of the complaint consists of allegations of fact as to
13 Plaintiff, GE lacks sufficient knowledge or information to form a belief as to the truth of the
14 allegations of paragraph 20, and on such basis the allegations are denied. To the extent that
15 paragraph 20 of the complaint consists of allegations of fact as to GE, GE denies such
16 allegations.

17 21. To the extent that paragraph 21 of the complaint consists of conclusions of law,
18 GE is not required to respond to it. To the extent that paragraph 21 of the complaint consists of
19 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
20 a belief as to the truth of the allegations of paragraph 21, and on such basis the allegations are
21 denied. To the extent that paragraph 21 of the complaint consists of allegations of fact as to
22 Plaintiff, GE lacks sufficient knowledge or information to form a belief as to the truth of the
23 allegations of paragraph 21, and on such basis the allegations are denied. To the extent that
24 paragraph 21 of the complaint consists of allegations of fact as to GE, GE denies such
25 allegations.

26 22. To the extent that paragraph 22 of the complaint consists of conclusions of law,
27 GE is not required to respond to it. To the extent that paragraph 22 of the complaint consists of
28 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form

1 a belief as to the truth of the allegations of paragraph 22, and on such basis the allegations are
 2 denied. To the extent that paragraph 22 of the complaint consists of allegations of fact as to GE,
 3 GE denies such allegations.

4 23. To the extent that paragraph 23 of the complaint consists of conclusions of law,
 5 GE is not required to respond to it. To the extent that paragraph 23 of the complaint consists of
 6 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 7 a belief as to the truth of the allegations of paragraph 23, and on such basis the allegations are
 8 denied. To the extent that paragraph 23 of the complaint consists of allegations of fact as to GE,
 9 GE denies such allegations.

10 24. To the extent that paragraph 24 of the complaint consists of conclusions of law,
 11 GE is not required to respond to it. To the extent that paragraph 24 of the complaint consists of
 12 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 13 a belief as to the truth of the allegations of paragraph 24, and on such basis the allegations are
 14 denied. To the extent that paragraph 24 of the complaint consists of allegations of fact as to GE,
 15 GE denies such allegations.

16 25. GE incorporates by reference as though fully set forth herein paragraphs 1 through
 17 24 of this Answer.

18 26. To the extent that paragraph 26 of the complaint consists of allegations of fact as
 19 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 20 of the allegations of paragraph 26, and on such basis the allegations are denied. To the extent
 21 that paragraph 26 of the complaint consists of allegations of fact as to GE, GE denies such
 22 allegations.

23 27. To the extent that paragraph 27 of the complaint consists of conclusions of law,
 24 GE is not required to respond to it. To the extent that paragraph 27 of the complaint consists of
 25 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 26 a belief as to the truth of the allegations of paragraph 27, and on such basis the allegations are
 27 denied. To the extent that paragraph 27 of the complaint consists of allegations of fact as to
 28 Plaintiff, GE lacks sufficient knowledge or information to form a belief as to the truth of the

1 allegations of paragraph 27, and on such basis the allegations are denied. To the extent that
 2 paragraph 27 of the complaint consists of allegations of fact as to GE, GE denies such
 3 allegations.

4 28. To the extent that paragraph 28 of the complaint consists of allegations of fact as
 5 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 6 of the allegations of paragraph 28, and on such basis the allegations are denied. To the extent
 7 that paragraph 28 of the complaint consists of allegations of fact as to Plaintiff, GE lacks
 8 sufficient knowledge or information to form a belief as to the truth of the allegations of
 9 paragraph 28, and on such basis the allegations are denied. To the extent that paragraph 28 of the
 10 complaint consists of allegations of fact as to GE, GE denies such allegations. GE lacks
 11 sufficient knowledge or information to respond to the allegation that exposed persons did not
 12 know of the substantial danger of using said products and, on that basis, denies it.

13 29. To the extent that paragraph 29 of the complaint consists of allegations of fact as
 14 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 15 of the allegations of paragraph 29, and on such basis the allegations are denied. To the extent
 16 that paragraph 29 of the complaint consists of allegations of fact as to GE, GE denies such
 17 allegations.

18 30. To the extent that paragraph 30 of the complaint consists of allegations of fact
 19 as to other defendants, GE lacks sufficient knowledge or information to form a belief as to the
 20 truth of the allegations of paragraph 30, and on such basis the allegations are denied. To the
 21 extent that paragraph 30 of the complaint consists of allegations of fact as to GE, GE denies such
 22 allegations.

23 31. To the extent that paragraph 31 of the complaint consists of allegations of fact as
 24 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 25 of the allegations of paragraph 31, and on such basis the allegations are denied. To the extent
 26 that paragraph 31 of the complaint consists of allegations of fact as to GE, GE denies such
 27 allegations.

28 32. To the extent that paragraph 32 of the complaint consists of allegations of fact as

1 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 2 of the allegations of paragraph 32, and on such basis the allegations are denied. To the extent
 3 that paragraph 32 of the complaint consists of allegations of fact as to Plaintiff, GE lacks
 4 sufficient knowledge or information to form a belief as to the truth of the allegations of
 5 paragraph 32, and on such basis the allegations are denied. To the extent that paragraph 32 of the
 6 complaint consists of allegations of fact as to GE, GE denies such allegations.

7 33. To the extent that paragraph 33 of the complaint consists of conclusions of law,
 8 GE is not required to respond to it. To the extent that paragraph 33 of the complaint consists of
 9 allegations of fact as to other defendants, GE lacks sufficient knowledge or information to form
 10 a belief as to the truth of the allegations of paragraph 33, and on such basis the allegations are
 11 denied. To the extent that paragraph 33 of the complaint consists of allegations of fact as to GE,
 12 GE denies such allegations.

13 34. To the extent that paragraph 34 of the complaint consists of allegations of fact as
 14 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 15 of the allegations of paragraph 34, and on such basis the allegations are denied. To the extent
 16 that paragraph 34 of the complaint consists of allegations of fact as to Plaintiff, GE lacks
 17 sufficient knowledge or information to form a belief as to the truth of the allegations of
 18 paragraph 34, and on such basis the allegations are denied. To the extent that paragraph 34 of the
 19 complaint consists of allegations of fact as to GE, GE denies such allegations.

20 35. To the extent that paragraph 35 of the complaint consists of allegations of fact as
 21 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth
 22 of the allegations of paragraph 35, and on such basis the allegations are denied. To the extent
 23 that paragraph 35 of the complaint consists of allegations of fact as to Plaintiff, GE lacks
 24 sufficient knowledge or information to form a belief as to the truth of the allegations of
 25 paragraph 35, and on such basis the allegations are denied. To the extent that paragraph 35 of the
 26 complaint consists of allegations of fact as to GE, GE denies such allegations.

27 36. To the extent that paragraph 36 of the complaint consists of allegations of fact as
 28 to other defendants, GE lacks sufficient knowledge or information to form a belief as to the truth

1 of the allegations of paragraph 36, and on such basis the allegations are denied. To the extent
 2 that paragraph 36 of the complaint consists of allegations of fact as to Plaintiff, GE lacks
 3 sufficient knowledge or information to form a belief as to the truth of the allegations of
 4 paragraph 36, and on such basis the allegations are denied. To the extent that paragraph 36 of the
 5 complaint consists of allegations of fact as to GE, GE denies such allegations.

6 **PRAYER**

7 GE further denies that Plaintiff is entitled to any damages to the extent Plaintiff seeks
 8 damages from GE and denies that Plaintiff is entitled to any relief from GE to the extent Plaintiff
 9 seeks any relief from GE. Further answering, GE lacks information or knowledge sufficient to
 10 respond to each and every allegation in Plaintiff's prayer for judgment and, on that basis, denies
 11 them.

12 **SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSES**

13 37. By alleging the Separate and Additional Affirmative Defenses set forth below, GE
 14 is not in any way agreeing or conceding that it has the burden of proof or burden of persuasion on
 15 any of these issues.

16 **FIRST AFFIRMATIVE DEFENSE**

17 38. GE alleges that said complaint and each cause of action therein fails to state facts
 18 sufficient to constitute a cause of action against Defendant.

19 **SECOND AFFIRMATIVE DEFENSE**

20 39. GE alleges that the causes of action, if any, attempted to be stated and set forth in
 21 said complaint are barred by the applicable statutes of limitations, including, but not limited to,
 22 the provisions of Code of Civil Procedure §§ 335.1, 338, 340.2. and 340(3).

23 **THIRD AFFIRMATIVE DEFENSE**

24 40. GE alleges that the causes of action, if any, attempted to be stated and set forth in
 25 said complaint are barred by laches.

26 **FOURTH AFFIRMATIVE DEFENSE**

27 41. GE alleges that the causes of action, if any, attempted to be stated in plaintiff's
 28 complaint are barred in whole or in part by the equitable doctrine of waiver and estoppel.

FIFTH AFFIRMATIVE DEFENSE

42. GE alleges that Plaintiff and others were negligent or otherwise at fault in and about the matters referred to in said complaint, and that such negligence and/or other fault bars or diminishes Plaintiff's recovery against GE.

SIXTH AFFIRMATIVE DEFENSE

43. GE alleges that Plaintiff was solely negligent in and about the matters alleged in said complaint and that such negligence on the part of Plaintiff was the sole legal cause of the injuries and damages complained of by Plaintiff, if any there were.

SEVENTH AFFIRMATIVE DEFENSE

44. GE alleges that Plaintiff assumed the risk of the matters referred to in said complaint, that Plaintiff knew and appreciated the nature of the risk, and that Plaintiff voluntarily accepted the risk.

EIGHTH AFFIRMATIVE DEFENSE

45. GE is informed and believes and thereon alleges that Plaintiff misused and abused the products referred to in said complaint, and failed to follow instructions, and that such misuse, abuse and failure to follow instructions on the part of Plaintiff proximately caused and contributed to the injuries and damages complained of in said complaint, if any there were.

NINTH AFFIRMATIVE DEFENSE

46. GE alleges that if Plaintiff sustained injuries attributable to the use of any product manufactured, supplied, or distributed by GE, which allegations are expressly denied, the injuries were solely caused by and attributable to the unreasonable, unforeseeable, and inappropriate purpose and improper use which was made of the product.

TENTH AFFIRMATIVE DEFENSE

47. GE alleges that if there was any negligence proximately causing the injuries or damages sustained by Plaintiff, if any, such negligence, if any, was solely that of defendants, firms, persons, or entities other than GE.

ELEVENTH AFFIRMATIVE DEFENSE

48. GE alleges that there is no privity between Plaintiff and GE.

TWELFTH AFFIRMATIVE DEFENSE

49. GE alleges that it gave no warranties, either express or implied, to Plaintiff and
 that neither Plaintiff nor others ever notified GE of any claims of breach of warranty, if any there
 were.

THIRTEENTH AFFIRMATIVE DEFENSE

50. GE alleges that said complaint and each cause of action therein is barred with
 respect to GE by the provisions of the Workers Compensation Act, including but not limited to
 Sections 3600, 3601, and 5300 of the Labor Code of the State of California.

FOURTEENTH AFFIRMATIVE DEFENSE

51. GE alleges that if there was any negligence proximately causing the injuries or
 damages, if any, sustained by Plaintiff, such negligence, if any, is collateral negligence, as that
 term is used and defined in Restatement 2d Torts, Section 426 and derivative authority.

FIFTEENTH AFFIRMATIVE DEFENSE

52. GE alleges that at the time of the matters referred to in the complaint, Plaintiff
 was employed by employers other than GE and was entitled to and received workers'
 compensation benefits from his employers; and that if there was any negligence proximately
 causing the injuries and damages sustained by Plaintiff, if any, such negligence, if any, was that
 of Plaintiff's employers.

SIXTEENTH AFFIRMATIVE DEFENSE

53. GE alleges that Plaintiff's claims, and each of them, and this action, are
 preempted by federal statutes and regulations governing work place exposure to asbestos.

SEVENTEENTH AFFIRMATIVE DEFENSE

54. GE alleges that the products referred to in said complaint, if manufactured by GE
 at all, were manufactured in strict compliance with reasonably precise United States government
 specifications, and that the hazards associated with use of the products, if any, were known
 equally to the federal government and GE. Boyle v. United Technologies Corp., 487 U.S. 500
 (1988). Therefore, the complaint and all alleged causes of action are barred by the government
 contractor defense.

EIGHTEENTH AFFIRMATIVE DEFENSE

55. GE alleges that to the extent said complaint purports to state a cause of action or basis for recovery under Sindell v. Abbott Laboratories (1990) 26 Cal.3d 588, it is barred by Plaintiff's failure to join as defendants the manufacturers of a substantial share of the asbestos products market, to which asbestos products Plaintiff was allegedly exposed, thereby causing the damages alleged; and, should it prove impossible to identify the manufacturer of the product that allegedly injured Plaintiff, said purported claim or cause of action is barred by the fault of Plaintiff and his agents in making identification of the manufacturer impossible.

NINETEENTH AFFIRMATIVE DEFENSE

56. GE alleges that, to the extent said complaint purports to state a cause of action or basis for recovery upon lack of identification of the manufacturer of the alleged injury-causing product, it fails to state facts sufficient to constitute a cause of action in that Plaintiff has asserted claims for relief which, if allowed, would contravene GE's constitutional rights to substantive due process of law, as preserved by the Fourteenth Amendment to the Constitution of the United States and by Article I, Section 7 of the Constitution of the State of California.

TWENTIETH AFFIRMATIVE DEFENSE

57. GE alleges that said complaint, to the extent that it seeks exemplary or punitive damages pursuant to California Civil Code Section 3294, violates GE's right to procedural due process under the Fourteenth Amendment of the United States Constitution, and Article I, Section 7 of the Constitution of the State of California, and therefore fails to state a cause of action upon which either punitive or exemplary damages can be awarded.

TWENTY-FIRST AFFIRMATIVE DEFENSE

58. GE alleges that said complaint, to the extent that it seeks punitive or exemplary damages pursuant to California Civil Code Section 3294, violates GE's right to protection from "excessive fines" as provided in the Eighth Amendment of the United States Constitution and Article I, Section 17 of the Constitution of the State of California, and violates GE's right to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States

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1 Constitution and the Constitution of the State of California, and therefore fails to state a cause of
 2 action supporting the punitive or exemplary damages claimed.

3 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

4 59. GE alleges that said complaint, and each cause of action therein, fails to state facts
 5 sufficient to warrant an award of punitive or exemplary damages against GE.

6 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

7 60. GE alleges that the "peculiar risk" doctrine is not applicable to the causes of
 8 action attempted to be stated and set forth against GE, because the injuries and damages
 9 complained of in the complaint, if any there were, arose in the course and scope of Plaintiff's
 10 employment by an independent contractor.

11 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

12 61. GE alleges that at all relevant times, Plaintiff's employers were sophisticated
 13 users of asbestos-containing products, and that said employers were aware of the dangers, if any,
 14 of asbestos-containing products, and that said employers' negligence in providing the products to
 15 their employees in a negligent, careless and reckless manner was a superseding intervening cause
 16 of Plaintiff's injuries, if any.

17 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

18 62. GE alleges that Plaintiff is barred from recovery in that all products produced
 19 by GE were in conformity with the existing state-of-the-art, and as a result, these products were
 20 not defective in any manner.

21 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

22 63. GE alleges that it had no knowledge, either actual or constructive, and by the
 23 application of reasonable, developed human skills and foresight had no reason to know of the
 24 propensities, if any, of any product allegedly manufactured, supplied, applied and/or sold by GE
 25 to cause or contribute to the creation of medical conditions or circumstances involving alleged
 26 injuries to the lungs, respiratory and cardiovascular systems, including cancer, mesothelioma, or
 27 any other illness of any type whatsoever.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

64. GE alleges that the causes of action, if any, attempted to be stated and set forth in said complaint for negligence per se are barred by California Labor Code Section 6304.5, and derivative authority.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

65. GE alleges that Plaintiff failed to exercise due diligence to mitigate his losses, injuries or damages, if any, and, accordingly, the amount of damages to which Plaintiff is entitled, if any, should be reduced by the amount of damages which otherwise would have been mitigated.

TWENTY-NINTH AFFIRMATIVE DEFENSE

66. GE alleges that the provisions of California Civil Code Section 1431.2 are applicable to the Complaint and each cause of action therein.

THIRTIETH AFFIRMATIVE DEFENSE

67. GE alleges that unforeseen and unforeseeable acts and omissions by others constitute a superseding, intervening cause of Plaintiff's injuries, if any.

THIRTY-FIRST AFFIRMATIVE DEFENSE

68. GE alleges that each of Plaintiff's claims, and this entire action, are preempted by all applicable federal law relating to railroads, their equipment, and/or alleged injuries and damages arising therefrom, including but not limited to the Locomotive Boiler Inspection Act, 49 U.S.C. sections 20701 et seq.

THIRTY-SECOND AFFIRMATIVE DEFENSE

69. GE alleges that as a result of his injuries, plaintiff has received and will continue to receive workers' compensation benefits from his employers or their insurance carriers, or both, in an amount not yet definitely ascertained and determined; that the total amount of these payments is not yet known to this defendant; that by virtue of the California Labor Code sections 3850 and 3852, and related sections, the employers and their insurance carriers are subrogated to the rights of the plaintiff for any and all monies plaintiff may receive from this defendant up to the amount paid to plaintiff; that the plaintiff's injuries arose as a direct and proximate result of

1 the negligence and carelessness of plaintiff's employers, and the employers and their insurance
 2 carriers are not entitled to reimbursement for monies paid or to be paid to plaintiff; and in the
 3 event of any judgment in favor of plaintiff and against this defendant, it should be reduced by the
 4 amounts paid or to be paid to plaintiff by the employers or their insurance carriers.

5 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

6 70. The matters alleged in said complaint are encompassed within and barred by a
 7 settlement and release agreement reached by the parties, which operates as a merger and bar
 8 against any further litigation on matters raised or potentially raised in connection with the
 9 settlement and release.

10 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

11 71. To the extent that Plaintiff has reached an accord with GE regarding this litigation
 12 and this accord was then properly satisfied, the claims, causes of action, theories of liability and
 13 matters alleged in said complaint are barred by the doctrine of accord and satisfaction.

14 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

15 72. GE contends that Plaintiff has released, settled, entered into an accord and
 16 satisfaction, or otherwise compromised his claims herein, and accordingly, said claims are
 17 barred.

18 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

19 73. The claims asserted in said complaint have been settled, compromised or
 20 otherwise discharged and GE is due a set off.

21 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

22 74. To the extent that Plaintiff has previously filed a dismissal in court dismissing
 23 with prejudice all of his asserted claims, causes of action , and other theories of liability against
 24 GE, the matters alleged in said complaint are barred by retraxit.

25 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

26 75. Plaintiff's claims herein are barred based on the primary right and res judicata
 27 doctrines which prohibit splitting a single cause of action into successive suits, and seeking new
 28 ///

1 recovery for injuries for which the Plaintiff was previously compensated by alleged joint
 2 tortfeasors.

3 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

4 76. Defendant alleges that at all relevant times Plaintiff was a sophisticated user of
 5 asbestos-containing products, that Plaintiff was aware, or should have been aware, of the
 6 dangers, if any, of asbestos-containing products, and that the sophisticated user doctrine is a
 7 complete bar to Plaintiff's claims against Defendant as a matter of law. Johnson v. American
 8 Standard, Inc., et al. (2005) 34 Cal.Rptr.3d 863.

9 **PRAYER**

10 WHEREFORE, GE prays that Plaintiff take nothing by reason of his complaint as to GE
 11 and that GE has judgment for its costs of suit and attorneys' fees and for such other and further
 12 relief as this Court may deem just and proper.

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 14 DATED: March 25, 2008 SEDGWICK, DETERT, MORAN & ARNOLD LLP

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 17 By: /S/ Derek S. Johnson
 18 Derek S. Johnson
 19 Attorneys for Defendant
 20 GENERAL ELECTRIC COMPANY
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JURY DEMAND

GE hereby demands a trial by jury of the captioned matter.

DATED: March 25, 2008 SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: /S/ Derek S. Johnson
Derek S. Johnson
Attorneys for Defendant
GENERAL ELECTRIC COMPANY

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil Local Rule 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

DATED: March 25, 2008 SEDGWICK, DETERT, MORAN & ARNOLD LLP

By: /S/ Derek S. Johnson
Derek S. Johnson
Attorneys for Defendant
GENERAL ELECTRIC COMPANY